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10/766,861

01/30/2004

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06/25/2007

EXAMINER

LAM, ANN Y

ART UNIT

PAPER NUMBER

1641

MAIL DATE

DELIVERY MODE

06/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/766,861

Applicant(s)

LEVY, MARK M.

Examiner

Ann Y. Lam

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17-19, 28-32 and 39-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 10, 12, 39, 43-46, 48, 49 and 51-57 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 9, 11, 13, 14, 17-19, 28-32, 40-42, 47 and 50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/11/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 8, 10, 12, 39, 43-46, 48, 49, 51-57 are rejected under 35

U.S.C. 102(e) as being anticipated by Stoltz, WO 02/102243 A1.

As to claims 1-5, Stoltz discloses a sampling device for obtaining samples of internal body substances in the digestive system wherein the device is a swallowable capsule which allows a sample of the body substance to enter the capsule through an inlet opening. The capsule comprises an inner chamber disposed to preserve a substantial negative pressure when the inlet opening is sealed, and admits flow of body substance into an inner chamber as long as there is a pressure different between the inner chamber and the external environment of the capsule (see abstract.) (The material entering the capsule is considered to be the constituent-of-interest. The material forming the capsule is considered to be the sink material (Applicants do not specify in claims 3-5 the sink material such that it is distinguished over Stoltz.)

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As to claim 8, the solid phase is considered to be a vacuum pump (page 8, line 29) since Applicant does not specify the structural elements of the solid phase.

As to claim 10, the sink material (capsule 2) is water non-soluble.

As to claim 12, Stoltz discloses that the capsule is made of a thermoplastic material (page 5, lines 6-7.) The capsule material is deemed to be the sink material, and it is a polymer.

As to claims 39, 43, 44, the device includes a vacuum pump (page 8, line 29.) The pump is inherently capable of mixing materials within the capsule and the constituent-of-interest since it provides for contact between the two materials and moves the two materials.

As to claim 45, the capsule is considered to be a housing since has the structure of a housing, i.e., its structure can house or substantially enclose material within its structure.

As to claim 46, 48 and 49, the housing is designed and constructed so as to prevent damage to the sink mechanism by constituents and gastrointestinal tract and it prevents damage to the gastrointestinal tract by the sink mechanism (page 3, lines 1-16.)

As to claim 51, the housing can expand and/or contract since it is made of thermoplastic material (page 5, lines 6-7.)

As to claims 52-55, the device is capable of being detected by magnetic resonance imaging or ultrasound imaging.

As to claim 56, there is a protective cover made of a biodegradable material, to degrade only when arriving to a predetermined location of said gastrointestinal tract (see page 10, lines 3-5, disclosing that the capsule is made of gelatin which is dissolved in the digestive system.)

As to claim 57, the device is capable of flowing into it the materials recited by Applicants.

### ***Allowable Subject Matter***

Claims 6, 7, 9, 11, 13, 14, 17-19, 28-32, 40-42, 47 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is 571-272-0822. The examiner can normally be reached on Mon.-Fri. 10-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



ANN YEN LAM  
PATENT EXAMINER